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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re HECTOR V., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. HECTOR V., Defendant and Appellant.	F076985 (Super. Ct. No. JJD070960) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Tulare County. Robert Anthony Fultz, Judge.

Andrea Keith, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Caely E. Fallini, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Poochigian, Acting P.J., Meehan, J. and Snauffer, J.

INTRODUCTION

A Welfare and Institutions Code[1] section 602 petition was filed against appellant Hector V. After a contested jurisdictional hearing, it was found true that Hector committed assault with a deadly weapon, elder abuse, second degree robbery, and grand theft from a person. At the dispositional hearing, the juvenile court placed Hector on probation subject to an electronic device search condition and committed him to 24 months in the Tulare County Long Term Program.

Hector contends the evidence is insufficient to sustain the assault with a deadly weapon and elder abuse counts. He also contends the electronic device search condition is unconstitutionally overbroad and an invasion of his privacy. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On November 2, 2017, a section 602 petition was filed against Hector. It alleged in counts 1 and 2 that Hector had committed assault with a deadly weapon and elder abuse against Yang Saeturn. Counts 3 and 4 alleged offenses of second degree robbery and grand theft from a person against two other victims.[2]

The jurisdictional hearing commenced on November 28, 2017. Saeturn and the other victims testified. At the conclusion of testimony, the juvenile court found counts 1 through 4 to be true.

In the probation report prepared for the disposition hearing, Hector admitted being a member of the North Side Visa gang. Hector was 14 years old at the time. While in custody, Hector had been the subject of numerous incident reports. The probation report recommended that Hector be subject to the "standard terms and conditions of probation, as well as those specific to his needs."

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1 References to code sections are to the Welfare and Institutions Code unless otherwise specified.

2 Other counts initially alleged were subsequently dismissed by the People.

The matter was set for a contested disposition. The disposition hearing was held on January 29, 2018. At the disposition hearing, 14-year-old Hector testified that he did commit the crimes that were found true at the jurisdictional hearing. The juvenile court declared Hector to be a ward of the court and placed him on probation, subject to terms and conditions. Hector was committed to the Tulare County Long Term Program for a period of 24 months and remanded forthwith.

Among the terms and conditions of probation was the requirement that Hector "submit to a search of his electronic devices to ensure he refrains from having contact with his coparticipants and victims." Hector's counsel objected to this condition of probation but did not state the basis of the objection. The juvenile court responded that the condition was appropriate "because of the no contact with the coparticipant clause."

The facts of the offenses are set forth below.

Assault and Elder Abuse

Around 6:00 p.m. on September 20, 2017, Yang Saeturn was weeding a community garden. Some boys picked up a hose and "drenched" her in water; they sprayed the water into her face. There were four boys and while their faces were covered in part, Saeturn could "recognize their eyes, their forehead and their stature." Saeturn recalled one of the boys was wearing a blue shirt, another wore jeans; none of the clothing appeared to be gang attire. They all wore different clothing.

After drenching her in water, the boys left but returned with sticks and began attacking Saeturn with the sticks. During the attack, she was "hit so hard that the blood in my eyes was released and I was blinded by the blood." Saeturn tried to walk away using the garden hoe as a cane when she was struck in the leg and went down. She tried to get up using the hoe for support but was struck in the arm. Saeturn used her cell phone to call 911 for help.

Help arrived and Saeturn was taken to the hospital. Saeturn had injuries to the left eye area, hand, and thigh where she was hit with a stick. One of the sticks had a nail in it

and that was the stick that injured the eye area. She also was hurt when she fell to the ground. At the time of the jurisdiction hearing, Saeturn was still in pain as a result of the attack.

Saeturn identified Hector as one of her attackers at the jurisdiction hearing. She testified Hector was wearing the same blue shirt at the hearing that he had worn on the day she was attacked.

Irma Andrade lives across the street from the community garden. She was in her yard when Saeturn was attacked. She saw a group of "kids" take a garden hose from Saeturn, wet her, and then each boy hit her with sticks. All of them had sticks. Two of them had been wearing masks but pushed them up when they finished the attack and Andrade was able to see all their faces.

The attack was "real quick." Andrade was dialing 911 as she ran across the street to the garden to assist Saeturn. The boys ran away after the attack. Andrade testified she saw Hector hitting Saeturn with a stick. Andrade said Saeturn was "really beaten bad." The sticks that were used to attack Saeturn were tree limbs of about six feet in length.

Later in the evening of the attack, police contacted Andrade to make a field identification. She identified Hector as one of the attackers. Hector was wearing a black shirt and black shorts when Andrade identified him the evening of the attack.

Visalia Police Officer Julian Lopez responded to the 911 call and saw four boys come down from the top of a stairwell near the top of a building and scatter. None of the boys were wearing masks. Hector was one of the boys; he was wearing all black. Two of the juveniles, including Hector, were detained by officers.

Lopez issued *Miranda*[3] rights to Hector and questioned him to determine if he knew right from wrong. Hector was wearing black clothing. When asked to give an example of the difference between right and wrong, Hector responded that it would be

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3 *Miranda v. Arizona* (1966) 384 U.S. 436.

wrong to "hurt somebody." When asked if it would be wrong to hit somebody on September 20, 2017, the date of the assault on Saeturn, Hector did not respond.

Visalia Police Officer Tim Haener interviewed Andrade the night of the attack on Saeturn. Andrade told Haener she saw four juveniles walk toward the community garden, put on Halloween masks, wet down Saeturn with a garden hose, arm themselves with sticks from the garden, and beat the elderly woman. Andrade stated they took off their masks as they ran away.

Three masks were found at the crime scene. Haener testified the masks would cover one's face but if they were made for an adult, they would be loose fitting on a juvenile and allow a person to see more of the eyes, forehead, and bridge of the nose.

Other Counts

Teenaged A.R. was riding his bike to school when Hector ran up behind him and slapped A.R. "hard" in the head, knocking him off his bike. Hector took A.R.'s bike and rode away.

Eliana Cerna was standing outside her place of work, talking on her cell phone. She watched as Hector approached her. Hector asked for directions and as Cerna turned to point with her left hand, Hector grabbed the cell phone from her right hand. Hector took off running.

DISCUSSION

Hector argues the evidence is insufficient to support the findings he committed the offenses in counts 1 and 2, which are the offenses against Saeturn. He also contends the electronic search condition is unconstitutionally overbroad and invades his privacy.

I. Sufficient Evidence Supports the Findings

Sufficiency of the Evidence Standard

The test of sufficiency of the evidence is whether, reviewing the whole record in the light most favorable to the judgment below, substantial evidence is disclosed such that a reasonable trier of fact could find the essential elements of the crime beyond a

reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578; accord, *Jackson v. Virginia* (1979) 443 U.S. 307, 319.) Substantial evidence is that evidence which is "reasonable, credible, and of solid value." (*People v. Johnson, supra,* at p. 578.) An appellate court must "presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*People v. Reilly* (1970) 3 Cal.3d 421, 425.) An appellate court must not reweigh the evidence (*People v. Culver* (1973) 10 Cal.3d 542, 548), reappraise the credibility of the witnesses, or resolve factual conflicts, as these are functions reserved for the trier of fact (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 367). This standard of review applies to juvenile proceedings. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605.)

Analysis

We acknowledge that Hector's counsel sought to discredit the testimony of Saeturn at the jurisdictional hearing. Counsel questioned how Saeturn could recognize her attackers if they were wearing masks; whether she could see clearly after being struck near her eye; whether she was confused; and asked various other questions designed to attack her identification of Hector.

Defense counsel also sought to attack the credibility of Andrade and her identification of Hector as one of the attackers. Counsel questioned Andrade about her prior statements to law enforcement and tried to show inconsistencies between the prior statements and Andrade's testimony at the jurisdictional hearing.

In finding counts 1 and 2 to be true, the juvenile court stated, "I understand there are some inconsistencies in the testimony, but I find the testimony given in court was compelling and was credible. In addition, the testimony and circumstantial evidence is—shows this to be true beyond a reasonable doubt."

Here, Hector was identified at the jurisdictional hearing by both Saeturn and Andrade as one of the boys that attacked Saeturn. Andrade also made a field identification of Hector the night of the attack. The testimony of a single witness is

sufficient to support a conviction, or true finding. (*People v. Boyer* (2006) 38 Cal.4th 412, 480; *People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1356.) Andrade's field identification of Hector is further evidence supporting the true findings. (*People v. Boyer*, *supra*, 38 Cal.4th at p. 480.)

That Saeturn did not see all of Hector's face is not grounds to dismiss her identification of him. A witness may identify an attacker by "any peculiarities of size, appearance, similarity of voice, features or clothing." (*People v. Mohammed* (2011) 201 Cal.App.4th 515, 522.) Moreover, any discrepancies between Saeturn's and Andrade's observations, and between their initial statements and in court identifications, is not grounds to reject their identification of Hector. These are matters that go to the weight of the evidence and credibility of the witnesses, which are matters to be determined by the trier of fact. (*Ibid.*)

Circumstantial evidence also supported the true findings against Hector. When Lopez responded to the scene of the attack, he saw four boys come down from the top of a stairwell near the top of a building and scatter. None of the juveniles were wearing masks and Hector was one of the boys in the group. Hector was wearing all black, which matched the description of his clothing given by Andrade.

Based upon the eyewitness identification of Hector and the circumstantial evidence of his presence near the scene of the attack in clothing matching the description of one of the attackers according to Andrade, a reasonable trier of fact could find beyond a reasonable doubt that Hector committed the offenses against Saeturn. (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

II. Electronic Search Condition

The probation officer recommended imposition of various terms and conditions of probation, including that "[t]he minor shall submit to a search of his/her electronic devices to ensure: he refrains from having contact with his co-participants and victims." The juvenile court imposed this condition.

Forfeiture

Hector now contends the electronic devices search condition is unconstitutionally overbroad and impinges on his constitutional right to privacy.[4] We initially note that Hector has forfeited this challenge. Although defense counsel objected to imposition of the electronic search condition, counsel failed to articulate any basis for the objection. "A defendant who contends a condition of probation is constitutionally flawed still has an obligation to object to the condition on that basis in the trial court in order to preserve the claim on appeal." (*People v. Gardineer* (2000) 79 Cal.App.4th 148, 151.) Having failed to preserve the claim for appeal, the contention is forfeited.

Regardless, Hector's challenge to the electronic search condition lacks merit. Generally, we review the imposition of any condition of probation for an abuse of discretion. (*People v. Snow* (2012) 205 Cal.App.4th 932, 940.) Reversal is required only if the juvenile court's ruling is arbitrary or capricious or exceeds the bounds of reason. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) Constitutional challenges to probation conditions, however, are reviewed de novo. (*In re Malik J.* (2015) 240 Cal.App.4th 896, 901.)

Juvenile Probation

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4 Questions concerning the propriety of the imposition of electronic search conditions are currently pending review before the state Supreme Court. (See, e.g., *People v. Nachbar* (2016) 3 Cal.App.5th 1122, review granted Dec. 14, 2016, S238210; *In re J.E.* (2016) 1 Cal.App.5th 795, review granted Oct. 12, 2016, S236628; *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923.)

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A ward of the juvenile court placed on probation is subject to "any and all reasonable conditions that [the court] may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (§ 730, subd. (b).) Thus, to effect an offender's rehabilitation the juvenile court has broad discretion to fashion the conditions of probation, and may even impose conditions that are unconstitutional or otherwise improper, so long as they are tailored to meet the juvenile's specific needs. (*In re J.B.* (2015) 242 Cal.App.4th 749, 753-754.)

"The juvenile court has wide discretion to select appropriate conditions [of probation] and may impose ' "any reasonable condition that is 'fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' " ' " (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) A condition of probation that would be unconstitutional or improper for an adult may be permissible for a minor. (*Ibid.*) "Juveniles are deemed to be more in need of guidance and supervision than adults, and their constitutional rights are more circumscribed. [Citation.] Further, when the state asserts jurisdiction over a minor, it stands in the shoes of the parents. A parent may curtail a child's exercise of constitutional rights because a parent's own constitutionally protected ' " 'liberty' " ' includes the right to ' " 'bring up children' " ' and to ' " 'direct the upbringing and education of children.' " ' [Citation.] Thus, the juvenile court may impose probation conditions that infringe on constitutional rights if the conditions are tailored to meet the needs of the minor." (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033-1034.) In deciding what probation conditions are appropriate, the juvenile court considers both the circumstances of the offense(s) and the minor's entire social history. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 7.)

Privacy Contention

We turn first to Hector's claim the electronic search condition unconstitutionally infringes on his privacy.

We disagree that the electronic search condition impermissibly infringes on Hector's privacy rights. As a ward of the court, Hector no longer enjoys the same privacy rights as one who is not. The right of a ward, or probationer, to be free from unreasonable searches or seizures gives way to government activities that reasonably limit the expectation of privacy, such as probation supervision. (*In re Kacy S.* (1998) 68 Cal.App.4th 704, 710-711.)

Hector's reliance on *People v. Appleton* (2016) 245 Cal.App.4th 717, 719 [adult probationer], *People v. Macabeo* (2016) 1 Cal.5th 1206, 1211-1212 [search of adult's device incident to arrest under mistaken belief he was on probation], and *Riley v. California* (2014) 134 S.Ct. 2473, 2477 [adult's cell phone searched incident to arrest], is misplaced. The constitutional interest in privacy of a juvenile ward of the court is significantly more curtailed than that of an adult, or someone who has not been convicted of a criminal offense. (*In re Jaime P.* (2006) 40 Cal.4th 128, 136; *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) The state, when it assumes jurisdiction over a minor, stands in the shoes of the parent and a parent may curtail a child's exercise of constitutional rights. (*In re Antonio R.*, at p. 941.)

A parent could quite reasonably elect to monitor a child's use of electronic devices for suspected association with persons the parent deems undesirable or criminal activity. When, as here, a minor has been declared a ward of the court because of criminal activity; has admitted to a history of substance abuse; has frequently been suspended from school; is an acknowledged gang member; and the minor fails to comply with parental rules and discipline; the state may elect to monitor use of electronic devices. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 919-923.)

Overbreadth Contention

We next turn to Hector's claim the electronic search condition is unconstitutionally overbroad. Probation conditions are invalid when they (1) have no relationship to the crime committed by the probationer; (2) relate to conduct which is not

itself criminal; and (3) require or forbid conduct which is not reasonably related to the probationer's future criminality. (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).) "This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) To avoid possible overbreadth, the probation condition must be closely tailored to its purpose. (*Id.* at p. 384.)

We acknowledge the electronic search condition has no relationship to the crimes committed by Hector, nor is the use of electronic devices itself criminal. However, juvenile courts have broader discretion than adult criminal courts in fashioning conditions of probation. (*In re Antonio C.*, *supra*, 83 Cal.App.4th at p. 1033.) So long as reformation and rehabilitation of the probationer is promoted, the juvenile court has broad discretion to impose conditions of probation. (*In re Luis F.* (2009) 177 Cal.App.4th 176, 188.) The electronic search condition promotes Hector's rehabilitation, tends to prevent future criminality, and satisfies *Lent.*

The electronic search condition is reasonably related to future criminality, even if it had no connection to the offenses for which Hector was declared a ward of the court. Hector engaged in criminal behavior with three other boys; admitted to the probation officer he had a history of using illegal substances; had frequently been suspended from school; and was an admitted gang member. Drug use and gang involvement are recognized as precursors to serious criminality. (*In re P.A.* (2012) 211 Cal.App.4th 23, 36; *In re Robert M.* (1985) 163 Cal.App.3d 812, 815-816.)

Access to electronic devices can be a useful tool in tracking possible use of illegal substances, contacts with his coparticipants in the offenses against Saeturn, and contacts with any of his victims, all of which is prohibited conduct under the terms and conditions of Hector's probation. A probation condition that enables a probation officer to effectively supervise a minor on probation is reasonably related to future criminality and

rehabilitation. (See *Olguin, supra,* 45 Cal.4th at pp. 379-381; *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, 1176-1177.)

We respectfully disagree with *In re Erica R.* (2015) 240 Cal.App.4th 907, 913, and *In re J.B.* (2015) 242 Cal.App.4th 749, 756-757[5] and their conclusion that because there was nothing in the record to tie the use of electronic devices to Hector's commitment offenses, there was no reason to believe an electronic search condition would serve a rehabilitative purpose. Nothing in *Lent* or *Olguin* requires a connection between a probationer's past conduct and the locations or items that may be subject to a search condition.

Given the ubiquity of electronic devices, we are not prepared to say that an electronic search condition is unreasonable simply because the record does not show the minor used them to engage in illegal activity. While the record does not contain evidence that Hector contacted associates or gang members or noted use of illegal substances through social media or his electronic devices, it is naïve to suggest that such contact did not or will not occur in the future. Call logs, text and voicemail messages, photographs, social media accounts (Facebook, Twitter, etc.), and emails are all likely to reveal whether Hector is engaging in conduct that violates his probation.

DISPOSITION

The disposition order, including all terms and conditions of probation contained therein, is affirmed.

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[5] Here, again, the other cases cited by Hector in this portion of his brief are inapposite because they address adult probationers.